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Proposed Lead Counsel for Proposed Lead Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SEAN RYAN, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

FIGS, INC., et al.,

Defendants.

Case No. 2:22-cv-07939-ODW-KS

CLASS ACTION

MEMORANDUM OF LAW IN
SUPPORT OF MOTION FOR
CONSOLIDATION OF RELATED
ACTIONS, APPOINTMENT AS
LEAD PLAINTIFF, AND APPROVAL
OF LEAD PLAINTIFF'S SELECTION
OF LEAD COUNSEL

DATE: February 13, 2023
TIME: 1:30 p.m.
CTRM: 5D, 5th Floor
JUDGE: Hon. Otis D. Wright II

1 I. INTRODUCTION

2 Two related securities class action lawsuits (the “Related Actions”) are pending
 3 before this Court, brought on behalf of all purchasers or acquirers of: (i) FIGS, Inc.
 4 (“FIGS” or the “Company”) securities between May 27, 2021 and May 12, 2022,
 5 inclusive (the “Class Period”); and/or (ii) FIGS Class A common stock pursuant
 6 and/or traceable to the offering documents issued in connection with FIGS’ initial
 7 public offering (the “IPO”) conducted on or around May 27, 2021; and/or (iii) FIGS
 8 Class A common stock pursuant and/or traceable to the Company’s secondary public
 9 offering (the “SPO”) conducted on or around September 16, 2021. The Related
 10 Actions are *Ryan v. FIGS, Inc.*, No. 2:22-cv-07939 (filed on 11/1/22) and *City of*
 11 *Hallandale Beach Police Officers’ and Firefighters’ Personnel Ret. Trust v. FIGS,*
 12 *Inc.*, No. 2:22-cv-08912 (filed on 12/08/22). The complaints allege similar claims
 13 against defendants under the Securities Act of 1933 (the “Securities Act”) and the
 14 Securities Exchange Act of 1934 (the “Exchange Act”).

15 The Private Securities Litigation Reform Act of 1995 (“PSLRA”) requires
 16 district courts to resolve consolidation before appointing a lead plaintiff in securities
 17 cases. *See* 15 U.S.C. §78u-4(a)(3)(B)(ii). The PSLRA amended the Securities Act
 18 and the Exchange Act in virtually identical ways as to the lead plaintiff provisions.
 19 *Compare* 15 U.S.C. §78u-4(a)(3)(B) *with* 15 U.S.C. §77z-1(a)(3)(B). For simplicity,
 20 only the Exchange Act is cited herein. As discussed below, because common
 21 questions of law and fact are involved in the Related Actions, consolidation is
 22 appropriate. *See* Fed. R. Civ. P. 42(a).

23 As soon as practicable after its decision on consolidation, the Court “shall
 24 appoint the most adequate plaintiff as lead plaintiff.” *See* 15 U.S.C. §78u-
 25 4(a)(3)(B)(ii). The lead plaintiff is the “member or members of the purported plaintiff
 26 class that the court determines to be most capable of adequately representing the
 27 interests of class members.” 15 U.S.C. §78u-4(a)(3)(B)(i). Here, the City of
 28 Pensacola Police Officers’ Retirement Plan, the City of Warren Police and Fire

Retirement System, the Kissimmee Utility Authority Employees' Retirement Plan, and the Pompano Beach Police & Firefighters' Retirement System (collectively, the "Public Pension Plans") should be appointed lead plaintiff because they filed a timely motion, have the largest financial interest in the outcome of this litigation, and will typically and adequately represent the class's interests. *See* 15 U.S.C. §78u-4(a)(3)(B)(iii). In addition, the Public Pension Plans' selection of Robbins Geller Rudman & Dowd LLP to serve as lead counsel should be approved because the Firm possesses extensive experience prosecuting securities class actions and will adequately represent the interests of all class members.

II. ARGUMENT

A. The Related Actions Should Be Consolidated

The PSLRA requires the Court to consolidate the Related Actions before appointing a lead plaintiff. *See* 15 U.S.C. §78u-4(a)(3)(B)(ii). Consolidation pursuant to Rule 42(a) is proper when actions involve common legal and factual questions. *See* Fed. R. Civ. P. 42(a).

Here, the Related Actions assert nearly identical theories of wrongdoing on behalf of purchasers of FIGS securities during the Class Period against similar defendants for alleged violations of the same provisions of the Securities Act and the Exchange Act. Consolidation will prevent needless duplication and possible confusion, as well as potentially inconsistent jury verdicts. There is also little or no risk of prejudice to the parties from consolidation. *See generally Lloyd v. CVB Fin. Corp.*, 2011 WL 13128303, at *3 (C.D. Cal. Jan. 21, 2011).

Accordingly, the Court should consolidate these cases.

B. The Public Pension Plans Should Be Appointed Lead Plaintiff

The PSLRA establishes the procedure for the appointment of a lead plaintiff in "each private action arising under [the Securities or Exchange Act] that is brought as a plaintiff class action pursuant to the Federal Rules of Civil Procedure." 15 U.S.C.

§78u-4(a)(1); *see also* 15 U.S.C. §78u-4(a)(3)(B)(i). First, “[n]ot later than 20 days” after the complaint is filed, a notice must be published “in a widely circulated national business-oriented publication or wire service” advising members of the purported plaintiff class “of the pendency of the action, the claims asserted therein, and the purported class period” and that “not later than 60 days after the date on which the notice is published, any member of the purported class may move the court to serve as lead plaintiff.” 15 U.S.C. §78u-4(a)(3)(A)(i). The statutory notice in this case was published on November 1, 2022 via *Business Wire*. *See* Declaration of Danielle S. Myers in Support of Motion for Consolidation of Related Actions, Appointment as Lead Plaintiff, and Approval of Lead Plaintiff’s Selection of Lead Counsel (“Myers Decl.”), Ex. A.

Next, the PSLRA provides that the Court shall adopt a presumption that the most adequate plaintiff is the person or group of persons that:

(aa) has either filed the complaint or made a motion in response to a notice . . .

(bb) in the determination of the court, has the largest financial interest in the relief sought by the class; and

(cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

15 U.S.C. §78u-4(a)(3)(B)(iii)(I); *see also In re Cavanaugh*, 306 F.3d 726 (9th Cir. 2002). The Public Pension Plans meet these requirements and should therefore be appointed as Lead Plaintiff.

1. This Motion Is Timely

The November 1, 2022 statutory notice published on *Business Wire* advised purported class members of the pendency of the first-filed action, the claims asserted, and the right to move the Court for appointment as lead plaintiff by January 3, 2023. *See* Myers Decl., Ex. A. Because the Public Pension Plans’ motion has been timely filed, they are eligible for appointment as lead plaintiff.

1 **2. The Public Pension Plans Have the Largest Financial**
 2 **Interest in the Relief Sought by the Class**

3 As evidenced by their Certifications and loss chart, the Public Pension Plans
 4 purchased 31,832 shares of FIGS common stock and suffered \$540,568 in losses as a
 5 result of defendants' alleged misconduct. *See* Myers Decl., Exs. B, C. The Public
 6 Pension Plans also purchased shares in connection with the IPO and SPO and have
 7 standing to assert claims under the Securities Act. *Id.* To the best of their counsel's
 8 knowledge, there are no other plaintiffs with a larger financial interest. Therefore, the
 9 Public Pension Plans satisfy the PSLRA's prerequisite of having the largest financial
 10 interest.

11 **3. The Public Pension Plans Satisfy the Rule 23**
 12 **Typicality and Adequacy Requirements**

13 In addition to possessing a significant financial interest, a lead plaintiff must
 14 also "otherwise satisf[y] the requirements of Rule 23 of the Federal Rules of Civil
 15 Procedure." 15 U.S.C. §78u-4(a)(3)(B)(iii)(I)(cc). Rule 23 requires that "the claims
 16 or defenses of the representative parties are typical of the claims or defenses of the
 17 class; and [that] the representative parties will fairly and adequately protect the
 18 interests of the class." Fed. R. Civ. P. 23(a)(3)-(4); *Cavanaugh*, 306 F.3d at 730
 19 (focusing "in particular" on typicality and adequacy at the lead plaintiff stage).
 20 Importantly, a "wide-ranging analysis under Rule 23 is not appropriate [at the initial
 21 stage of the litigation] and should be left for consideration on a motion for class
 22 certification." *Lloyd*, 2011 WL 13128303, at *5 (citation omitted).

23 "Under [Rule 23's] permissive standards, representative claims are "typical" if
 24 they are reasonably co-extensive with those of absent class members; they need not be
 25 substantially identical." *Id.* (citation omitted). Here, like all other class members, the
 26 Public Pension Plans: (1) purchased FIGS common stock in connection with the IPO,
 27 SPO, and/or during the Class Period; (2) were adversely affected by the alleged
 28 wrongdoing; and (3) suffered damages thereby. *See* Myers Decl., Exs. B, C. "The
 typicality requirement thus appears to be satisfied because [their] claims arise 'from

1 the same event[s] or course of conduct that gives rise to the claims of other class
2 members,' and are 'based on the same legal theory.'" *Lloyd*, 2011 WL 13128303, at
3 *6 (citation omitted).

4 "The Ninth Circuit has held that representation is 'adequate' when counsel for
5 the class is qualified and competent, the representative's interests are not antagonistic
6 to the interests of absent class members, and it is unlikely that the action is collusive."
7 *Id.* Here, the Public Pension Plans' substantial stake in the outcome of the case
8 indicates that they have the requisite incentive to vigorously represent the class's
9 claims. The Public Pension Plans' interests are aligned with the interests of the
10 putative class and there is no evidence of any antagonism between the Public Pension
11 Plans' interests and the class's interests. And, as institutional investors, the Public
12 Pension Plans are precisely the type of investors whose participation in securities class
13 actions Congress sought to encourage through the enactment of the PSLRA. *See*
14 *generally In re Cendant Corp. Litig.*, 264 F.3d 201, 273 (3d Cir. 2001) ("Both the
15 Conference Committee Report and the Senate Report state that the purpose of the
16 legislation was to encourage institutional investors to serve as lead plaintiff, predicting
17 that their involvement would significantly benefit absent class members.'").

18 As set forth in greater detail in the Joint Declaration submitted herewith, the
19 Public Pension Plans understand the obligations of a lead plaintiff to absent class
20 members under the PSLRA and are willing and able to undertake the responsibilities
21 of lead plaintiff in this litigation to ensure vigorous and efficient prosecution. *See*
22 *Myers Decl.*, Ex. D. The Public Pension Plans' collaboration in this litigation follows
23 from their roles as fiduciaries to their respective members and their shared goals and
24 interests in protecting and maximizing fund assets. Moreover, before seeking a role as
25 lead plaintiff, representatives of the Public Pension Plans discussed, among other
26 things, the merits of the claims, as well as their common goals and strategy for the
27 joint prosecution of this action. *See id.* Thus, the Public Pension Plans have the
28

1 incentive and commitment to vigorously prosecute this action in a cohesive and
2 coordinated fashion, and the ability to supervise and monitor counsel.

3 Finally, the Public Pension Plans have selected qualified counsel to represent
4 them and the putative class. *See* §II.C., *infra*. As such, the Court should find that the
5 adequacy requirement has been met.

6 Because the Public Pension Plans filed a timely motion, have a large financial
7 interest in the relief sought by the class, and demonstrated their typicality and
8 adequacy, the Court should adopt the presumption that they are the “most adequate
9 plaintiff.”

10 **C. The Court Should Approve the Public Pension Plans’** 11 **Selection of Counsel**

12 The PSLRA entitles the lead plaintiff to select and retain counsel to represent
13 the class, subject to the court’s approval. *See* 15 U.S.C. §78u-4(a)(3)(B)(v); *see also*
14 *In re Cohen*, 586 F.3d 703, 711-12 (9th Cir. 2009); *Cavanaugh*, 306 F.3d at 732-35.
15 In this case, the Public Pension Plans have selected Robbins Geller.¹

16 Robbins Geller, a 200-attorney nationwide law firm with offices in California,
17 regularly practices complex securities litigation. The Firm’s securities department
18 includes numerous trial attorneys and many former federal and state prosecutors, and
19 utilizes an extensive group of in-house experts to aid in the prosecution of complex
20 securities issues. Courts throughout the country, including this District, have noted
21 Robbins Geller’s reputation for excellence, which has resulted in the appointment of
22 Robbins Geller attorneys to lead roles in hundreds of complex class action securities
23 cases. *See, e.g., In re Cooper Cos. Sec. Litig.*, 254 F.R.D. 628, 636 (C.D. Cal. 2009)
24 (noting that it was “undisputable” that Robbins Geller lawyers have “extensive
25 experience prosecuting suits of this nature”). Notably, in the last three years alone,
26 Robbins Geller recovered more than \$4 billion on behalf of investors in securities

27 ¹ For a detailed description of proposed lead counsel’s track record, resources, and attorneys,
28 please see <https://www.rgrdlaw.com>. Paper copies of the Firm’s resume is available upon the
Court’s request, if preferred.

class action cases, including \$1.02 billion in *In re Am. Realty Cap. Props., Inc. Litig.*, No. 1:15-mc-00040-AKH (S.D.N.Y.), \$1.21 billion in *In re Valeant Pharm. Int'l, Inc. Sec. Litig.*, No. 3:15-cv-07658-MAS-LHG (D.N.J.), \$809.5 million in *In re Twitter Inc. Sec. Litig.*, No. 4:16-cv-05314-JST (N.D. Cal.), and \$350 million in *Smilovits v. First Solar, Inc.*, No. 2:12-cv-00555-DGC (D. Ariz.). Robbins Geller has also obtained the largest securities fraud class action recoveries in the Fifth, Sixth, Seventh, Eighth, Tenth, and Eleventh Circuits, as well as an in-District 2019 PSLRA class action trial victory in *HsingChing Hsu v. Puma Biotechnology, Inc.*, No. 8:15-cv-00865-AG (C.D. Cal.), where the jury returned a verdict for plaintiff, finding that defendants Puma Biotechnology, Inc. and its CEO committed securities fraud.

Based upon its counsel's extensive experience and proven track record in securities class actions, the Public Pension Plans' selection of counsel is reasonable and should be approved.

III. CONCLUSION

The Related Actions involve common factual and legal questions and should be consolidated. In addition, the Public Pension Plans have satisfied each of the PSLRA's requirements for appointment as lead plaintiff. Accordingly, the Public Pension Plans respectfully request that the Court grant their motion for consolidation, appointment as lead plaintiff, and approval of their selection of counsel.

DATED: January 3, 2023

Respectfully submitted,

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Additional Counsel for Proposed Lead
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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on January 3, 2023, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the email addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ Danielle S. Myers
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Mailing Information for a Case 2:22-cv-07939-ODW-KS Sean Ryan v. FIGS, Inc. et al

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